SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 731

KENNETH R. JONES,

Petitioner,

v.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

ROBERT H. BOYLE, JR.
CHARLES MORGAN, JR.
5 Forsyth Street
Atlanta, Georgia 30303

PERCY J. JULIAN, JR.
340 East Wilson Street
Madison, Wisconsin 53703

RICHARD BUTTMAN
1865 Broadway
New York, New York

MELVIN L. WULF
ELEANOR HOLMES NORTON
156 Fifth Avenue
New York, New York

Of Counsel

J. I. CRESWELL, JR.
Third National Bank Building
Nashville, Tennessee

Attorneys for Petitioner

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Petitioner Jones petitions for rehearing of the order entered February 24, 1970 dismissing the Writ of Certiorari as improvidently granted. Alternatively to plenary reconsideration, petitioner moves that the judgment be vacated and remanded for further findings.

The order dismissing the writ says that "it emerges, as it did not from the Certiorari papers . . . that Jones' indefinite suspension was based in part on a finding that he lied at the hearing . . ." (Slip Opinion at 1-2). The Petition for Certiorari contains the following:

> The [A.C.] also found that Jones "did not tell the truth when he appeared before us in this regard [*Id.*]. While it is extremely doubtful that this finding is correct, it cannot in any event serve as a basis for dismissal as he was never charged with dishonesty. (Petition for Certiorari at 7 n. 11).

> the procedure represents a particular deprivation of due process in the context of this hearing in which the resolution of credibility between the students on the one hand and the president and members of the [AA] on the other was a central factor "

> "In Jones case the conflict was so severe that it resulted in an uncharged finding against him that he had not told the truth" *Ibid* at 120

> Jones' dismissal for an uncharged offense [that] already [has been] noted *supra* p 2 n 11 " *Ibid* at 121

The last quotation is from the argument of the due process issues presented collectively (this uncharged finding having appeared to be the least difficult of these issues to the petition's fourth question [1]

It may be that the implication that counsel had not fully informed the Court of the issues was for the purpose of avoiding the appearance of disapproving *Dixon v Alabama State Board of Education* [294 F 2d 150 (5th Cir) cert *denied* 368 U S 930 (1961)] and its multitudinous progeny However the opinion does not explicitly state that *Dixon* due process rights (particularly the notice and hearing which were not granted here) will continue Hence despite the apparent ease with which the opinion dismissing the writ is construed its effect will inevitably be to cast doubt upon the correctness of almost a decade of active development of students' procedural rights The likelihood of such doubts increases with the realization that the existence of an uncharged ground for dismissal could so easily have been brushed aside under the *Dixon* due process rationale as to the dissent suggests under *In re Ruffalo* [390 U S 544 (1968)]

[1] Whether the disciplinary proceedings were in violation of due process of law in that notice of charges witnesses and evidence was insufficient confrontation of witnesses was denied and the findings were not all based on the evidence (Petition for Certiorari at 5)

This result, extraneous to the primary reason for granting certiorari, can be avoided by the granting of this petition for rehearing, vacating the judgment and remanding to the district court for findings as to the effect of the I.A.C.'s uncharged finding.

Respectfully submitted,

Robert L. Boulé, Jr.
Charles Morgan, Jr.
5 Forsyth Street, N.W.
Atlanta, Georgia 30303

Percy L. Julian, Jr.
130 East Wilson Street
Madison, Wisconsin 53703

Richard Bellman
1865 Broadway
New York, New York

Melvin L. Wulf
Legal Director
American Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

J. J. Cresswell, Jr.
Third National Bank Building
Nashville, Tennessee

Attorneys for Petitioner
(Of Counsel)

CERTIFICATE OF COUNSEL

I, Robert L. Boulé, Jr., a member of the bar of this court hereby certify that the foregoing Petition for Rehearing is presented in good faith and is not presented for the purposes of delay.

/s/ Robert L. Boulé, Jr.